

days after the date of publication of the notice of initiation of the administrative review. In light of the fact that Japan Synthetic Rubber Co., Ltd.'s request for termination was submitted within the 90-day time limit and there were no requests for review from other interested parties, we are terminating this review for Japan Synthetic Rubber Co., Ltd. See *Certain Welded Stainless Steel Pipe from Korea, Termination of Antidumping Duty Administrative Review*, 62 FR 47460, (September 9, 1997). We will issue appraisal instructions directly to the U.S. Customs Service.

This notice is in accordance with 19 CFR 353.22(a)(5).

Dated: October 15, 1997.

Richard W. Moreland,

*Acting Deputy Assistant Secretary, Group II,
Import Administration.*

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-824]

Notice of Termination of New Shipper Antidumping Duty Administrative Review: Polyvinyl Alcohol From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 22, 1997.

FOR FURTHER INFORMATION CONTACT: Everett Kelly or Brian Smith, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-4194 or (202) 482-1766, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to those codified at 19 CFR part 353, as they existed on April 1, 1996.

Background

On December 18, 1996, the Department published in the **Federal Register** notice the initiation of a new shipper administrative review of the

antidumping duty order on polyvinyl alcohol from Taiwan covering the exporter Perry Chemical Corporation ("Perry") and the period May 1, 1996, through October 31, 1996 (61 FR 68237, December 28, 1996).

Under Section 751(a)(2)(B)(i) of the Act, the Department will conduct an administrative review to establish an individual weighted average dumping margin if the Department receives a request from an exporter or producer that establishes (1) it did not export the merchandise that was the subject of the antidumping duty order to the United States during the period of investigation and (2) it is not affiliated within the meaning of section 771(33), any exporter or producer who exported the merchandise to the United States during that period of investigation.

In the less than fair value (LTFV) investigation, the Department investigated the sales of Chang Chun Petrochemicals, Ltd. (Chang Chun), the only exporter of PVA from Taiwan during the period of investigation, including sales to Perry, a U.S. importer. The record indicates that Perry has had a longstanding business relationship as an importer of PVA produced by Chang Chun and imported the subject merchandise produced and exported by Chang Chun during the period of the LTFV investigation. The Department found Chang Chun to be dumping at a rate of 19.21 percent during the LTFV investigation. In this review, the business relationship remains essentially unchanged. As shown by proprietary information on the record in this review, Perry continues to be the importer and Chang Chun continues to undertake the entire production of PVA.

For the sales in question in this review, Perry states that in addition to being the importer, it is now also the "manufacturer/exporter" of the subject merchandise, and that as a new exporter, it is entitled to a new shipper rate. Perry indicates that to produce the subject merchandise, Perry purchased the primary input of PVA, vinyl acetate monomer (VAM) from a Taiwan producer of VAM through an unaffiliated U.S. trading company. Perry contracted with Chang Chun to produce PVA utilizing Perry's VAM under a tolling arrangement. Perry then sold the PVA to unaffiliated customers in the United States and Canada during the period of review (POR).

In most past cases involving tolling arrangements the Department considered the manufacturer of the product exported to the United States to be the processor or toller, and not the party which controlled the production process, set the prices of the finished

product in all markets, and held title to both the inputs and the subject merchandise (see, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Small Diameter Welded Carbon Steel Pipes and Tubes from the Philippines*, 51 FR 33099, September 18, 1986).

Within the last few years, the Department has reconsidered its position of deeming the toller the manufacturer. A toller has no control over the price charged to U.S. and domestic buyers of the finished product, nor does a toller set the price in either market. Moreover, because the Department only considered the price or cost of the tolling in making comparisons between U.S. prices and prices of sales of the foreign like product, the Department did not capture all of the costs of manufacturing the subject merchandise, e.g., cost of inputs, as required by the statute section 773. Therefore, this approach did not allow for analysis of price comparisons between the finished products.

To resolve this situation, the Department revised its tolling practice. Rather than treat the toller as the producer, the Department now will treat the party who keeps title to the inputs and the finished product, controls the entire production process, and sets the price of the finished product in each market as the producer and, hence, the proper respondent (see *Discussion Memorandum: A Proposed Alternative to Current Tolling Methodology in the Current Antidumping (AD) Reviews of Carbon Steel Flat Products*, Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary for Compliance, to Susan G. Esserman, Assistant Secretary for Import Administration, dated December 12, 1994).

This approach is also reflected in the Department's preamble to its new regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27295 (May 19, 1997)). Under section 351.401(h) of the new regulations, which, although not legally in effect for this new shipper review, are, at the time of this request for review, an expression of the Department's practice, the Department will not consider a toller or subcontractor to be a manufacturer or producer where the toller or subcontractor does not acquire ownership of the finished product and does not control the relevant sale of the subject merchandise and the foreign like product. See also *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27411 (legally effective only for segments of the proceeding initiated based on requests filed after June 18,

1997, but nevertheless a restatement of the Department's practice).

Perry claims that under the tolling agreement between Perry and Chang Chun, Perry maintains control of the entire production process by (1) controlling the supply of the major input, VAM, used to produce tolled PVA by Chang Chun, (2) controlling Chang Chun's production of tolled PVA through the specifications (grades) and amounts to be produced, (3) retaining title to VAM and the finished product throughout the tolling process, and (4) establishing the prices, the quantities and specifications/grade at which the tolled PVA will be sold in the United States and other markets. Perry pays a fee to Chang Chun for these services.

Perry has stated the following on the record of this proceeding:

(1) Perry controlled the sales process of the tolled PVA.

As detailed in its questionnaire responses, Perry controlled all aspects of its tolled PVA sales. It identified customers and negotiated the terms of sale with them. Perry arranged the warehousing and palletization of the tolled PVA prior to delivery to its customers. Perry shipped the merchandise to its customers and carried the accounts receivables until payment was received.

(2) Perry controlled the production of the tolled merchandise.

As detailed in its questionnaire responses, Perry controlled Chang Chun's production of PVA according to the terms of the tolling agreement. Perry determined all specifications for production of the PVA. Chang Chun could not deviate from Perry's production specifications without Perry's written approval. (This is reflected in the warranty terms set out in the contract.) Chang Chun could not produce PVA from the VAM owned by Perry without Perry's written instructions.

(3) Perry held title to the input materials.

As detailed in Perry's questionnaire responses, Perry purchased VAM through an unaffiliated trading company. Perry retained title to the merchandise throughout the PVA production process while the material was in Chang Chun's possession. Title did not transfer until it passed to Perry's customers upon delivery to them.

Petitioner, Air Products and Chemicals, Inc., argues that Chang Chun, not Perry, is the producer of the subject merchandise because the processing performed by Chang Chun is not a minor finishing operation, but

rather a substantial transformation which converts VAM into the subject merchandise. Petitioner further contends that the Department should terminate this review because, based on the facts presented in this proceeding, there is no material difference between the Chang Chun sales to Perry in the LTFV investigation, when Perry was merely an importer, and the alleged tolling relationship now in existence between Chang Chun and Perry. The only difference is the paperwork. Petitioner concluded that Perry is not entitled to a new shipper review because Chang Chun is the true manufacturer of the subject merchandise.

Petitioner also argues that Perry is not entitled to a new shipper review because Perry and Chang Chun are affiliated under the affiliated parties provision of section 771(33)(G) of the Act. Petitioner contends that although Perry is not affiliated with Chang Chun through stock ownership, it is affiliated with Chang Chun by its close supplier relationship and its debt financing.

Perry responds that it has fully satisfied the Department's revised interpretation of a manufacturer/exporter of tolled merchandise and, therefore, Chang Chun is not the manufacturer of the merchandise. Perry further states that petitioner's conclusion that Chang Chun is the manufacturer is inconsistent with the standard for manufacturer/producer status codified in the Department's new regulations at 19 CFR section 351.401(h) (1997). Finally, Perry responds that, as the proprietary information placed on the record shows, its accounts payable to Chang Chun is not debt financing and does not establish an affiliation under the Act. Moreover, Chang Chun made a submission asserting that it does not exercise control over Perry through the supplier relationship.

We have determined that Perry does not qualify as a new shipper regardless of whether we regard it as the producer of PVA tolled by Chang Chun. If we were to continue to regard Chang Chun as the producer, Chang Chun (not Perry) would be both the producer and the exporter, because Chang Chun has knowledge at the time it sells to Perry that the subject merchandise is for export to the United States. On the other hand, if Perry is the producer based on a tolling arrangement with Chang Chun, we find that Perry would be affiliated with Chang Chun, an exporter of subject merchandise during the investigation.

Perry claims that it controlled all aspects of the subcontractor's operations in the tolling transaction—i.e., Chang

Chun's processing of VAM. Perry's own questionnaire responses indicated that Perry exercised direction over Chang Chun in all facets of the processing of VAM. This direction purportedly also illustrated in the tolling agreement between Perry and Chang Chun, included as part of the February 26, 1997, questionnaire response.

Under section 771(33)(G) of the Act, the Department will consider parties to be "affiliated" if one person controls any other person. The statutory provision defines control as a situation in which one person is legally or operationally in a position to exercise restraint or direction over another person. Based on our analysis of the information on the record, we do not find that Chang Chun exercises control over Perry through debt financing or the supplier relationship. However, based on Perry's own statements on the record, Perry was legally and operationally in a position to exercise direction over Chang Chun's production of PVA under contract to Perry and exported by Perry to the United States during the POR. Accordingly, Perry's assertions indicate that Perry and Chang Chun are affiliated persons within the meaning of section 771(33)(G) of the Act with regard to Perry's sales of PVA tolled by Chang Chun.

Based on this determination of affiliation, this proceeding does not meet the requirements of section 751(a)(2)(B) of the Act for conducting a new shipper review with regard to Perry's sales of tolled PVA since Perry is affiliated with Chang Chun, which was a producer who exported and producer of the subject merchandise during the period of the LTFV. This determination of affiliation under section 771(33)(G) of the Act is based on the particular facts of this review, and is made only in the context of determining Perry's eligibility for a new shipper review under section 751(a)(2)(B). Alternatively, if Perry is not the manufacturer based on a tolling arrangement, there likewise is no basis for conducting a new shipper review. Therefore, the Department is terminating this review.

Dated: October 14, 1997.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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